

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CIVIL NO. 2:11-CV-00011

THRASH LIMITED PARTNERSHIP,

Plaintiff,

v.

UNITED STATES OF AMERICA, and
THOMAS L. THRASH and wife,
LORA R. THRASH,

Defendants.

FILED
ASHEVILLE, NC

FEB 14 2012

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

CONSENT JUDGMENT

THIS MATTER is before the Undersigned Magistrate Judge for entry of Judgment confirming and implementing a settlement among all parties to this action of all issues presented or which could have been presented in this civil action as between them.

This civil action was brought by Thrash Limited Partnership, a North Carolina landowner, against the United States of America under 28 U.S.C. § 1346(f) seeking to quiet title to roadway easements over adjoining Department of Agriculture Forest Service lands in Cherokee County, North Carolina. In the event such easements were to be confirmed and the United States nevertheless elected to retain possession or control of the roadways, Plaintiff sought just compensation for the taking of such interests. In the event such easements were determined by the Court not to be valid, Plaintiff then asserted a claim against its grantors for violating the warranties made in their deed.

The easements addressed herein are identified as follows and are particularly described later

in this Consent Judgment:

FSR 420-1. Forest Service Road No. 420-1, also known as Tellico Trail No. 1, is located in Cherokee County, North Carolina, crossing United States Tracts K-757a and N-632 of the Nantahala National Forest. This road follows, and for some distance parallels, the old Wagon Train Road in a northern direction from Davis Creek Road, SR 1337, for approximately 5.6 miles to a point at the North Carolina – Tennessee line .

FSR 420-6. Forest Service Road No. 420-6, also known as Tellico Trail No. 6, is located in Cherokee County, North Carolina, crossing United States Tract N-632 of the Nantahala National Forest. This road follows the Fain Cabin Tract Road A in an easterly direction from FSR 420-1 for approximately 2 miles to its intersection with Fain Cabin Tract Road B.

Old Woods Road. Old Woods Road is located in Cherokee County, North Carolina, crossing United States Tract N-632 of the Nantahala National Forest. This road follows the continuation of Fain Cabin Tract Road A from its intersection with Fain Cabin Tract Road B in an easterly direction for approximately 1.36 miles to the southwestern line of Thrash Limited Partnership.

Fain Cabin Tract Road B. Fain Cabin Tract Road B is located in Cherokee County, North Carolina, crossing United States Tract N-632 of the Nantahala National Forest. This road proceeds from the point where Fain Cabin Tract Road A and FS Trail 6 intersect, thence in a southwesterly direction for approximately 4.7 miles to its intersection with FSR 420-1.

It is the purpose of this Consent Judgment to resolve all claims among all parties to this action relating to the lands in question except as otherwise herein reserved, and (a) for the United States to convey to Thrash Limited Partnership perpetual easements over FSR 420-1, FSR 420-6 and the Old Woods Road to run with its lands, (b) for Thrash Limited Partnership to release and quitclaim to the United States its interest in Fain Cabin Tract Road B and any and all other claims of prescriptive easement regarding USA Tract N-632, and (c) for Plaintiff Thrash Limited Partnership and Defendants Thomas L. Thrash and Lora R. Thrash to resolve all claims between them. It is the

intent of the parties and the Court that this Consent Judgment shall operate as the conveyances of such interests and that it shall be recorded locally in the Office of the Register of Deeds.

IT IS NOW, THEREFORE, BY CONSENT OF ALL PARTIES, ORDERED,

ADJUDGED AND DECREED as follows:

DEED OF EASEMENT TO THRASH LIMITED PARTNERSHIP

The United States of America, by and through the Secretary of the United States Department of Agriculture, Forest Service, whose address is 160 Zillicoa Street, Suite A, Asheville, North Carolina 28704, for a valuable consideration paid by Thrash Limited Partnership, a North Carolina limited partnership whose address is 94 Gaston Mountain Road, Asheville, North Carolina 28806, the receipt and adequacy of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Thrash Limited Partnership, its heirs, successors and assigns, non-exclusive easements for ingress, egress and regress that are more particularly described as FSR 420-1, FSR 420-6 and the Old Woods Road in Exhibit A annexed hereto.

The designation United States of America and Thrash Limited Partnership as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

To have and to hold the aforesaid easements and all privileges and appurtenances thereto belonging to Thrash Limited Partnership, its heirs, successors and assigns, forever.

The term of these easements is perpetual and shall be appurtenant to and run with the lands of Thrash Limited Partnership described in the following deeds:

Deed from Jean Dickey White, widow; Harry Dickey and wife, Betty Lou Dickey; and Jack Dickey

and wife, Blanche Dickey, to Thomas L. Thrash and wife, Lora R. Thrash, on December 6, 1990, as recorded in Book 622, Page 73, of the Cherokee County Register of Deeds, containing approximately 461.6 acres, being the same land described as Tract #2 in a deed from Thomas L. Thrash and wife, Lora R. Thrash, to Thrash Limited Partnership dated December 30, 1992, and recorded in Book 666, Page 125, of the Cherokee County Register of Deeds, and Deed from W.N.C. Limited Partnership to Thomas L. Thrash and wife, Lora R. Thrash, on December 11, 1991, as recorded in Book 641, Page 204, of the County of Cherokee Register of Deeds, containing approximately 295.32 acres, being the same land described in a deed from Thomas L. Thrash and wife, Lora R. Thrash, to Thrash Limited Partnership dated December 7, 1999, and recorded in Book 884, Page 183, of the Cherokee County Register of Deeds.

The easements are granted subject to the following terms, provisions and, conditions:

1. Description. Nonexclusive perpetual easements for ingress, egress and regress over an existing road right-of-way located along and with the existing centerlines of said roads. The easements are twenty feet in width and are located ten feet on either side of said existing centerlines, plus such additional widths as may be required for reasonably necessary cuts and fills.

2. Use. The easements herein granted are limited to the historical use of the roads by the Thrash Limited Partnership's predecessors in interest which preceded the acquisition of Tract N-632 by the United States of America. In the event Thrash Limited Partnership, or any successor, attempts to substantially or unreasonably increase such use and the United States of America does not agree to such increase, the extent of such use shall be determined by the United States District Court for the Western District of North Carolina in accordance with then prevailing Federal and State laws. Unless otherwise from time to time authorized by U.S. Forest Service regulations, only highway legal vehicles (motor vehicles licensed under state law for general operation on all public roads within the state) shall use FSR 420-1 and FSR 420-6, but no such restriction shall apply to the use of the Old Woods Road. Travel on the easements by Thrash Limited Partnership, its guests, invitees and agents shall not be restricted during seasonal and/or other road closures except for temporary periods of reasonably short duration where required, in good faith, for road maintenance or repair, public safety, or for law enforcement purposes

3. Gate. Thrash Limited Partnership shall install and maintain a standard Forest Service road gate at the point where FSR 420-6 terminates and the Old Woods Road commences and shall provide keys thereto to the United States Forest Service, which may also utilize its own gate lock in a double-lock configuration. Thrash Limited Partnership shall construct and maintain this gate consistent with U.S. Forest Service standards for gates in similar circumstances.

4. Maintenance. This grant of easements does not create an obligation on the part of the United States of America or on the part of Thrash Limited Partnership to maintain the roads in a useable condition.

5. As to the Old Woods Road Only:

a. Thrash Limited Partnership may maintain the easement on the Old Woods Road to the extent it requires for its own use. Provided, however, that any maintenance by means of chemicals may only be conducted pursuant to specific written approval by the United States of America upon written application specifying the time, method, chemicals and exact portion of the easements to be chemically treated, which approval shall not be unreasonably withheld. Any maintenance or use by Thrash Limited Partnership shall be conducted in such a manner that no damage results to adjacent National Forest lands. Lead-off drainage and water barriers shall be constructed and maintained as necessary to prevent erosion.

b. Thrash Limited Partnership shall have the right to cut timber upon the easement areas adjacent to the Old Woods Road to the extent necessary for maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into standard log lengths and placed at roadside for disposal by the United States of America.

6. As to FSR 420-1 and/or FSR 420-6.

In the event that the United States government ceases to maintain FSR 420-1 and/or FSR 420-6 (Trail No. 6) as a Forest System Road, Thrash Limited Partnership will be free to maintain either or both of such roads consistent with their historic use of those roads and under the same restrictions applicable to the Old Woods Road set forth in paragraphs 5(a) and 5(b) above. Thrash Limited Partnership will likewise be free to remove natural blockages from the roadways to permit passage.

The easements are granted subject to the following reservations:

1. The right to cross and recross the roads at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Thrash Limited Partnership's use of the

roads.

2. The right to all timber now or hereafter growing on the easements, subject to Thrash Limited Partnership's right to cut such timber herein provided.
3. The right alone to extend rights and privileges for use of the easements to other users, provided that non-federal users shall bear a fair share of the current replacement cost less depreciation of the road and shall reconstruct the road as necessary to accommodate their use.
4. The right to use or authorize the use of the easements by other federal agencies, without cost other than the performance of maintenance or payment, as it may elect, for its proportionate share of maintenance costs.
5. The right to occupy and use the easements, and to issue or grant easements for other land uses for other than road purposes upon, over, under and through the easements, so long as any such occupancy or use does not unreasonably interfere with the rights granted herein to Thrash Limited Partnership, does not impair the use of the easements by Thrash Limited Partnership or make such use more difficult or inconvenient.
6. The right to relocate the easements at no expense to Thrash Limited Partnership to the extent reasonably necessary to accommodate the management needs of the National Forests, so long as any such relocation does not unreasonably interfere with the rights granted herein to Thrash Limited Partnership, does not impair the use of the easements by Thrash Limited Partnership or make such use more difficult or inconvenient.
7. The right to use the road for all purposes deemed necessary or desirable by the United States of America in connection with the protection, administration, management and utilization of its lands or resources, now or hereafter owned or controlled, so long as any such use does not unreasonably interfere with the rights granted herein to Thrash Limited Partnership, impair the use of the easements by Thrash Limited Partnership or make such use more difficult or inconvenient.
8. The right alone to extend rights and privileges for use of the easements to other United States departments and agencies, to States and local subdivisions thereof and to other users, including members of the public; provided, that the United States of America shall control such use by others so as not to unreasonably interfere with the rights granted herein to Thrash Limited Partnership, impair the use of the easements by Thrash Limited Partnership or make such use more difficult or inconvenient, or cause Thrash Limited Partnership to bear a share of the cost of maintenance of the easements greater than is commensurate with its use of the easements.

QUITCLAIM DEED OF EASEMENT TO UNITED STATES OF AMERICA

Thrash Limited Partnership, by and through its General Partner, for a valuable consideration paid

by the United States of America, the receipt and adequacy of which is hereby acknowledged, has and by these presents does release, remise and quitclaim unto The United States of America, its heirs, successors and assigns, all interest it has or may have in and to any prescriptive rights or easement for ingress, egress and regress over USA Tract N-632, including but not limited to a claim of prescriptive easement over Fain Cabin Tract Road B as is more particularly described in Exhibit A annexed hereto.

**RESOLUTION OF ALL CLAIMS BETWEEN THRASH LIMITED PARTNERSHIP
AND DEFENDANTS THOMAS L. THRASH AND WIFE, LORA R. THRASH**


Thrash Limited Partnership and Defendants Thomas L. Thrash and Lora R. Thrash hereby stipulate and agree that all claims between them in this lawsuit are now resolved.

ALL CLAIMS IN THIS LAWSUIT RESOLVED

All claims raised in this lawsuit are hereby resolved as set forth in this Consent Judgment, and, as between Thrash Limited Partnership and Defendants Thomas L. Thrash and Lora R. Thrash, as set forth in a separate agreement. Any claim in the lawsuit not specifically addressed in this Consent Judgment is hereby dismissed with prejudice. All parties shall pay their respective costs, expenses and attorneys fees.

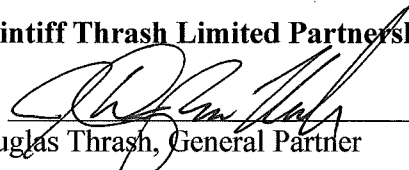
IT IS SO ORDERED, ADJUDGED AND DECREED.

This 14th day of ^{February}~~January~~, 2012.



Dennis L. Howell
United States Magistrate Judge

By Consent:

Plaintiff Thrash Limited Partnership

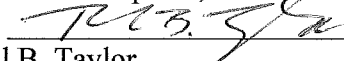
By: 
Douglas Thrash, General Partner

Adams Hendon Carson Crow & Saenger, P.A.

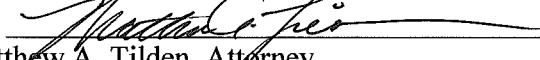
By: 
George Ward Hendon
Attorneys for Plaintiff

Defendant United States of America

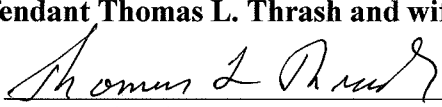
Anne M. Tompkins, United States Attorney

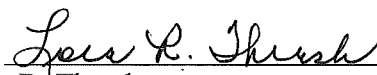
By: 
Paul B. Taylor
Assistant United States Attorney
Chief, Civil Division

United States Department of Agriculture

By: 
Matthew A. Tilden, Attorney
Office of the General Counsel
Attorneys for Defendant United States of America

Defendant Thomas L. Thrash and wife, Lora R. Thrash

By: 
Thomas L. Thrash

By: 
Lora R. Thrash

Van Winkle, Buck, Wall, Starnes & Davis, P.A.

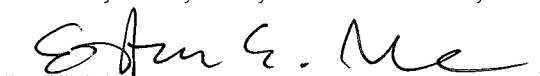
By: 
Esther E. Manheimer
Attorneys for Defendants Thomas L. Thrash and wife, Lora R. Thrash

EXHIBIT A

TO CONSENT JUDGMENT

United States of America to Thrash Limited Partnership Easement for FSR 420-1

A nonexclusive perpetual easement for use of existing road FSR 420-1 located in Cherokee County, North Carolina, crossing USA Tracts K-757a and N-632 of the Nantahala National Forest. The easement is twenty feet in width and located ten feet on either side of the existing centerline plus such additional widths as may be required for reasonably necessary cuts and fills. The location of FSR 420-1 is delineated on a map dated September 12, 2011, titled "Thrash Limited Partnership v. United States of America, et al. Reciprocal Easements". Said map is made part of this description by reference and attached as Exhibit 1. The easement is more particularly described as follows:

Commencing at Corner 2 of USA Tract K-757a; thence Southwesterly along the easterly boundary of said tract approximately 700 feet to a point intersecting the centerline of existing road FSR 420-1, being the Point of Beginning; thence northerly approximately 5.60 miles along the existing centerline of said road to a point at the North Carolina - Tennessee state line.

United States of America to Thrash Limited Partnership Easement for FS Trail 6 (420-6)

A nonexclusive perpetual easement for use of existing road FS Trail 6 located in Cherokee County, North Carolina, crossing USA Tract N-632 of the Nantahala National Forest. Said easement shall be twenty feet in width and located ten feet on either side of the existing centerline, plus such additional widths as may be required for reasonably necessary cuts and fills. The location of FS Trail 6 is delineated on a map dated September 12, 2011, titled "Thrash Limited Partnership v. United States of America, et al. Reciprocal Easements". Said map is made part of this description by reference and attached as Exhibit 1. The easement is more particularly described as follows:

Beginning at the Point of Intersection of FSR 420-1 and FS Trail 6; thence in an easterly direction approximately 2.00 miles to the Point of Intersection with Fain Cabin Tract Road B as shown on said September 12, 2011 map, said point being the Point of Ending.

United States of America to Thrash Limited Partnership Easement for an Existing Woods Road

A nonexclusive perpetual easement for use of an existing woods road, located in Cherokee County, North Carolina, crossing USA Tract N-632 of the Nantahala National Forest. Said easement shall be twenty feet in width, located ten feet on either side of the existing centerline, plus such additional width as may be required for reasonably necessary cuts and fills. The location of said existing woods road is delineated on a map dated September 12, 2011, titled

“Thrash Limited Partnership v. United States of America, et al. Reciprocal Easements”. Said map is made part of this description by reference and attached as Exhibit 1. The existing centerline of said road is hereby deemed accepted by Grantor and Grantee as the true centerline of the easement granted. The easement is more particularly described as follows:

Commencing at Corner 33 of USA Tract N-632; thence Southeasterly along the northerly boundary of said tract approximately 750 feet to a point intersecting the centerline of an existing woods road, being the Point of Beginning; thence southwesterly approximately 1.36 miles along the existing centerline of said road to a Point of Intersection with FS Trail 6 and Fain Cabin Tract Roads B, said point being the Point of Ending.

Thrash Limited Partnership to United States of America for Fain Cabin Tract Road B

Grantor conveys and quitclaims to the United States of America all interest it has or may have in and to any prescriptive rights or easement for ingress, egress and regress over USA Tract N-632, including but not limited to a claim of prescriptive easement over existing Fain Cabin Tract Road B located in Cherokee County, North Carolina, crossing USA Tract N-632 of the Nantahala National Forest. The location of said existing woods road is delineated on a map dated September 12, 2011, titled “Thrash Limited Partnership v. United States of America, et al. Reciprocal Easements”. Said map is made part of this description by reference and attached as Exhibit 1. The delineated existing centerline of said road is hereby deemed accepted by Grantor and Grantee as the true centerline location of the easement granted. The easement is more particularly described as follows:

Beginning at the Point of Intersection of FS Trail 6 and Fain Cabin Tract Road B; thence in a generally southeasterly and southwesterly direction along the existing centerline of Fain Cabin Tract Road B approximately 4.70 miles to the Point of Intersection with FSR 420-1, said point being the Point of Ending.